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In re Application of Disalvo et al. :
Application No. 10/827,569 :
Filing Date: April 16, 2004 :
Attorney Docket No. PPC-813 DIV :

OFFICE OF PETITIONS
Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed October 16, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed August 25, 2005, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on November 26, 2005. A Notice of Abandonment was mailed on March 9, 2006.

A proper reply to a final rejection consists only of:

- (1) an amendment which *prima facie* placed the case in condition for allowance,
- (2) a Notice of Appeal and the required fee,
- (3) a RCE, or
- (4) a continuation application.

The proposed amendment filed with the petition was sent to the examiner to determine whether it placed the application in condition for allowance. The examiner determined that the proposed amendment raised new issues requiring further search or consideration. Specifically, the examiner determined the proposed amendment raises new issues that would require further consideration and/or search. For example, the examiner noted, "the addition of the limitation requiring the absorbent body to form an intravaginal tampon and requiring a vibration to be felt by a user in conjunction with the previously claimed limitations will require further searching and consideration."

Since the amendment does not *prima facie* place the application in condition for allowance, it is an improper reply to the final Office action mailed on August 25, 2005.

Any renewed petition should be accompanied by a proper reply in the form of a Notice of Appeal, RCE, or continuation application. If petitioner fails to reply in the form of a Notice of

Appeal (and fee), proper RCE, or continuation application, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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